

## PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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SOURCE: 61 FR 50213, Sept. 24, 1996, unless otherwise noted.

### § 28.1 Purpose.

This part:

(a) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents; and

(b) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. Hearings under this part shall be conducted in accordance with the Administrative Procedure Act pursuant to part 26, subpart B, of this chapter.

[61 FR 50213, Sept. 24, 1996, as amended at 73 FR 76831, Dec. 17, 2008]

### § 28.5 Definitions.

(a) The terms *ALJ* and *HUD* are defined in 24 CFR part 5.

(b) The terms *Claim*, *Knows or has reason to know*, *Person*, *Reviewing Official*, and *Statement* have the same meanings as defined in 31 U.S.C. 3801.

(c) *Ability to pay* is determined based on an assessment of the respondent's resources available both presently and prospectively from which the Department could ultimately recover the total award, which may be predicted based on historical evidence.

(d) *Benefit* means anything of value, including, but not limited to, any ad-

vantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan insurance or guarantee.

(e) *Respondent* means any person alleged to be liable for a civil penalty or assessment under § 28.25.

(f) The *reasonable prospect of collecting an appropriate amount of penalties and assessments* is determined based on a generalized assessment made by a Reviewing Official based on the limited information available in the Report of Investigation for purposes of determining whether the allocation of HUD's resources to any particular action is appropriate. This assessment is not the same as the assessment made when determining ability to pay, nor is the reasonable prospect of collecting a factor to be considered in determining the amount of any penalty or assessment in any particular case.

(g) *Report of Investigation* means a report containing the findings and conclusions of a Program Fraud Civil Remedies Act investigation by the Inspector General or his or her designee, as described in § 28.15.

[73 FR 76831, Dec. 17, 2008]

### § 28.10 Basis for civil penalties and assessments.

(a) *Claims*. (1) A civil penalty of up to \$7,500 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by a written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that:

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of the omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to HUD, to a recipient, or to a party when the claim actually is made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD, the recipient, or the party.

(4) Each claim for property, services, or money is subject to a civil penalty without regard to whether the property, services, or money actually is delivered or paid.

(5) Liability under this part shall not lie if the amount of money or value of property or services claimed exceeds \$150,000 as to each claim that a person submits. For purposes of paragraph (a) of this section, a group of claims submitted simultaneously as part of a single transaction shall be considered a single claim.

(6) If the Government has made any payment, transferred property, or provided services on a claim, then the Government may assess a person found liable up to twice the amount of the claim or portion of the claim that is determined to be in violation of paragraph (a)(1) of this section.

(b) *Statements.* (1) A civil penalty of up to \$7,500 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

(i) The person knows or has reason to know:

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B)(i) Omits a material fact; and

(2) Is false, fictitious, or fraudulent as a result of such omission;

(ii) In the case of a statement described in (b)(1)(A)(ii) of this section, is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(iii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to HUD when the statement is actually made to an agent, fiscal inter-

mediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD.

(c) *Limit on liability.* If the claim or statement relates to low-income housing benefits or housing benefits for the elderly or handicapped, then a person may be held liable only if he or she has made the claim or statement in the course of applying for such benefits, with respect to his or her eligibility, or family's eligibility, to receive such benefits. For purposes of paragraph (c) of this section, "*housing benefits*" means any instance wherein funds administered by the Secretary directly or indirectly permit low-income families or elderly or handicapped persons to reside in housing that otherwise would not be available to them.

(d) *Specific intent.* No proof of specific intent to defraud is required to establish liability under this section.

(e) *Joint and several liability.* A civil penalty or assessment may be imposed jointly and severally if more than one person is determined to be liable.

[61 FR 50213, Sept. 24, 1996, as amended at 68 FR 12787, Mar. 17, 2003; 72 FR 5588, Feb. 6, 2007; 73 FR 76831, Dec. 17, 2008]

#### § 28.15 Investigation.

(a) *General.* HUD may initiate a Program Fraud Civil Remedies Act (31 U.S.C. 3801) case against a respondent only upon an investigation by the Inspector General or his or her designee.

(b) *Subpoena.* Pursuant to 31 U.S.C. 3804(a), the Inspector General or designee may require by subpoena the production of records and other documents. The subpoena shall state the authority under which it is issued, identify the records sought, and name the person designated to receive the records. The recipient of the subpoena shall provide a certification that the documents sought have been produced, that the documents are not available and the reasons they are not available, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) *Investigation report.* If the Inspector General or designee concludes that an action under the Program Fraud Civil Remedies Act may be warranted, her or she shall submit a report containing the findings and conclusions of